INDERJEET SINGH A/L PIARA SINGH

v.

MAZLAN BIN JASMAN & 2 ORS.

HIGH COURT MALAYA, SELANGOR
DATO' JAMES FOONG J
[CIVIL NO. 23-19-89]
31 OCTOBER 1994

TORT: *Road accident - Admission to hospital - Suspected rupture of urethra - Treatment - Failure to conduct urethrogram or cystoscopy to confirm suspicion - Whether there was negligence on the part of the doctors treating the plaintiff - Plaintiff suffering from brain injury and partial quadraplegia - Whether the diagnosis and treatments undergone by the plaintiff caused and attributed substantially to the plaintiff's present condition.*

TORT: *Road accident - Liability - Plaintiff's injuries aggravated by treatment in hospital - Apportionment of liability - Principles applicable.*

TORT: *Road accident - General damages for pain & suffering - Fracture of femur, fracture of tibia and fibula, fracture of pelvis, abrasions and lacerations, brain injury and partial quadraplegia - Cost of pre-trial and post-trial nursing care.*

The plaintiff was injured in a collision with the first defendant's vehicle on 30 November 1988. The plaintiff was admitted to the second defendant's hospital and was treated and operated upon by the second defendant's doctors. Although the second defendant's doctors suspected a urethra injury, the second defendant's doctors failed to carry out any tests to confirm any injury to the plaintiff's urethra and bladder. Instead the plaintiff was catheterised a number of times from the time of admission to 6 January 1989 with each catheterisation making the plaintiff more vulnerable to bacterial infection which ultimately led to the onset of septicaemia.

Only upon discharge from the second defendant's hospital and on being admitted into University Hospital were tests carried out confirming that the plaintiff suffered a complete rupture of the urethra with massive abscess in the pelvic cavity leading to septicaemia which, according to the neuro consultant who examined the plaintiff, most likely resulted in the plaintiff suffering from brain injury and becoming a partial quadraplegiac.

The question before the Court was whether the second defendants were negligent in their treatment of the plaintiff while the plaintiff was under their care and if so, the question of apportionment of liability between the first defendant one the one hand and the second and third defendants on the other. The other question that arose was on the cost and period of nursing care for the plaintiff.

Held:

[1] The failure of the second defendant's doctors to carry out the relevant procedures to confirm the rupture of the urethra, inspite of suspecting a rupture and instead in catheterising the plaintiff a number of times leading to bacterial infection and the onset of septicaemia which resulted in brain injury, amounts to negligence and coupled with the incorrect diagnosis and treatments caused and attributed substantially to the plaintiff's present condition. In addition there were also failures of the second defendant's doctors in exercising a fair and reasonable standard of care and skill as expected of an ordinary professional possessing such skill and art when treating the plaintiff.

[2] The first defendant's contention, that the interim sum of RM50,000 paid to the plaintiff under a Court order should be sufficient to pay for their portion of the liability since there is no evidence of any disabilities to the plaintiff's limb, was unacceptable. This is because there is no evidence to detect precisely that the present condition of the plaintiff, especially his limb and immobility, are not due to his initial injuries. In the circumstances and adopting the method used in the case of *Kathararayan v. Ng Sup Moi*, the damages awarded are to be apportioned according to the degree of liability of the defendants. The apportionment of liability is 20% against the first defendant and 80% against the second and third defendants.

[3] The damages for pain, suffering and loss of amenities are awarded as follows:

(i) Fracture of femur RM12,000

(ii) Fracture of tibia and fibula RM12,000

(iii) Fracture of pelvis RM16,000

(iv) Abrasions and lacerations RM4,000

(v) Brain injury and partial quadraplegia RM200,000

[4] As for the cost and duration of nursing care for the plaintiff, considering the condition of the plaintiff who is confined to a wheelchair, a sum of RM500 per month as nursing care would be reasonable. Using the annuity table the plaintiff is awarded the cost of post-trial nursing care for a period of 20 years. The plaintiff is also entitled to the cost of pre-trial nursing care for a period of 70 months.

[Judgment for plaintiff with interest and costs]

Cases referred to:
Bolam v. Friern Hospital Committee [1957] 2 All ER 118 ***(refd)***
Chin Keow v. Government of Malaysia [1967] 2 MLJ 45 ***(refd)***
Ow Nam Seng v. Nagamah [1992] 1 MLJ 128 ***(refd)***
Kathararayan v. Ng Sup Moi [1987] CLJ 246 ***(foll)***
Kow Nan Seng v. Negamah & Ors. [1982] CLJ 128 ***(refd)***

For the plaintiff - G.S. Mani; M/s. G.S. Mani & Co.
For the 1st defendant - Americk Singh, (Gan Eng Loke with him); M/s. Megat Najmuddin Leong & Co.
For the 2nd & 3rd defendants - Pillai (Haliza with her); Attorney-General's Chambers

JUDGMENT

James Foong J:

On 30 November 1988, the plaintiff while riding a motor cycle was collided into by a motor car driver by the first defendant. As he was injured he was first admitted to the second defendants' hospital. His initial injuries were as follows:

- Diatasis pubic symphysis
- Fracture of midshaft right femur
- Fracture of right tibia/fibula
- Hypovolemia

He was immediately treated and operated upon by DW1, the orthopaedic surgeon. The femur was plated, tibia nailed and external fixation applied to the pelvis. An x-ray was done to the lower abdomen area and according to DW1, urethra injury was suspected. A catheter was

inserted into the plaintiff's urethra. The orthopaedic operation seemed successful and when clear urine was found to be discharging from the plaintiff, the catheter was removed on 2 December 1988. It was also the opinion of DW1 that since stainless steel plates were inserted into the body of the plaintiff, it would be prudent to remove the catheter as its presence (the catheter) would increase the chances of infection in the plaintiff's body. The plaintiff was then advised to move his limbs and if possible walk a little. DW1 then went on leave on 11 December 1988.

On 13 December 1988, the plaintiff urinated blood and started to have difficulty with urination. He also developed fever. The plaintiff was then transferred to surgery and at that material time the head of this department was DW2. A catheter was immediately inserted. DW2 then ordered the following treatment:

- Continuous bladder drainage for 3 weeks,
- 4 hourly bladder wash out,
- Urine FEME (Full examination as well as microscopic examination),
- Urine culture and sensitively every week

According to the plaintiff's father, PW1, despite the presence of the catheter, urine continued to seep out from the side of the catheters. Blood was also discharged. From the record of the second defendant hospital, the plaintiff was catheterised 5 times beginning from 13 December 1988 to 1 January 1989.

On 20 December 1988, the laboratory results of the urine culture showed the presence of psendomonas (a second generation of bacteria). DW2 then changed the antibiotic administered to the plaintiff. According to DW2, the plaintiff's temperature dropped and urine came through the catheter and they were clear. However, according to the PW1, the plaintiff's abdomen swelled during this period, and in order to urinate the plaintiff had to depress his abdomen.

On 27 December 1988 when the plaintiff was catheterised for the fourth time since his admission, blood was again found in his urine. His condition deteriorated with vomiting, nauseation and abdomen discomfort. According to PW1, the plaintiff's speech began to slur.

27 December 1988 was also a date when the plaintiff was supposed to have a urethrogram test. This is an examination conducted with the assistance of a radiologist to determine whether a urethra is ruptured. Unfortunately, this appointment had to be cancelled due to the unavailability of the radiologist who had taken an emergency leave on this date.

By 31 December 1988, the plaintiff had lapsed into a semi-coma and was according to the PW1, "in a state of stupor." His urine was cloudy and mixed with blood.

On 1 January 1989, PW1 alleged that the plaintiff was in coma and was immediately transferred to the Intensive Care Unit. There he was treated by a team of doctors, consisting of the chief physician, chief anaesthetist, the chief surgeon (DW2) and, the orthopeadic surgeon (DW1) who had returned from leave. The treatment adopted during this period was to concentrate in balancing the plaintiff's electrolyte.

When DW1 examined the plaintiff on 1 January 1989, he was surprised at the condition of the plaintiff. He also noticed a supra pubic mess on the plaintiff's abdomen. Using a needle and a syringe, he punctured this mess and extracted some liquid. This he found to be urine. He immediately recatherterised the plaintiff, since he was of the opinion that catheter was not properly inserted. From then on, this supra pubic mess subsided and urine flowed out from the catheter. On this date, DW1 also removed plates from the plaintiff's body inserted to assist in the union of his fractured bones.

According to PW1, by 4 January 1989, the plaintiff was very weak and was in coma. He then approached one Dr. Tayar who was in charge of balancing the plaintiff's electrolyte. He was informed by this doctor that though the plaintiff's electrolytes were balanced, his condition has not improved, possibly due to "something wrong with his head". As the second defendants' hospital did not possess a CAT scan, he advised PW1 to send the plaintiff to the University Hospital to receive further treatment.

On 6 January 1989, upon receiving two referral letters, one from Dr. Tayar and the other from DW1, the plaintiff was transferred to the University Hospital. Though there was an accusation that the plaintiff discharged himself forcefully, this Court finds that this transfer was done by mutual consent of both PW1 and the doctors of the second defendants' hospital.

Upon admission to the University Hospital, the plaintiff was treated by PW5, the urologist. A CAT scan was immediately carried out and it showed no evidence of cerebral hematoma. A urethrogram was done 4 days later where it revealed a complete rupture of the urethra with massive abscess in the pelvis cavity. The bladder was also detached from the plaintiff's urethra. The abscess was cleaned up, a catheter railroaded into the bladder and a suprapubic cystostomy performed. The plaintiff's condition then improved and according to PW1, he was told by PW5 that though constructive surgery was done, the plaintiff's "head is gone".

In the opinion of PW5, the plaintiff's condition was caused by "an abscess in the pubic area as a result of the rupture of the urethra, and this abscess remained undiagnosed and caused him to have septicaemia, and this prolonged episode of septicimia most likely affected his mental function."

Dr. Arumugasamy, a neuro consultant examined the plaintiff on 4 December 1989, after the plaintiff was discharged from the University Hospital. He found the plaintiff conscious and alert but unable to vocalise. He was able to smile and mutter a few gutteral sounds but was for most part uncommunicative. He needed help to walk and he evidenced bilateral foot drop and contractures. He was unable to use his hands for fine movements, like buttoning his shirt or holding a pencil, pen or cup. He had however some gross shoulder and elbow movements. Attempts to make him walk on his own were unsuccessful. He swallowed with difficulty. He was unable to cooperate in the examination of his visual acuity and fields. There were evidence of weakness of his right arm and hand compared to the left. His left leg was also weak compared to the right. He was generally weak in all four extremities. He has also childish behaviour.

An MRI multi-planner and biecho examination of the plaintiff's head was carried out by Dr. Arumugasamy. He discovered demyelination of the pons. The pons are brain stumps and demyelination was explained as loss of insulating fat around the nerve fibre of the pons. According to Dr. Arumugasamy this could have been caused by the plaintiff having a severe infection caused by his urinary problems with abscess in his pelvis. This infection may result in septicaemis shock that would cause confusion and disorientation. He could then have developed pontine abscess which lead to infarction (lack of blood supply to the brain). The MRI imaging did indicate residual effects of such infarction of the pons. The other possibility is that the plaintiff may have developed a septic thrombosis (shutting off blood supply) of the vessel supplying blood to this area of the brainstem.

The pontine infarction, according to Dr. Arumugasamy has "resulted in his difficulty in swallowing and no doubt accounts for his previous disorientation and comatose condition with high temperature. The weakness in his legs could also be attributed to this documented problem, no doubt compounded by the fractures and prolonged immobilisation from the multiple fractures".

This first and foremost issue before this Court is whether the second defendants were negligent in their treatment of the plaintiff while the plaintiff was under their care. The second defendants strenuously denied that they were negligent, and according to their doctors (DW1 and DW2) who were directly involved in treating the plaintiff, they had taken all necessary steps and exercised all reasonable skill according to accepted medical standards in treating the plaintiff. The plaintiff however, through the opinions of Dr. Arumugasamy and Dr. Lee (PW5), and to a large extent that of Dr. Khairuddin (DW3), (the consultant urologist attached to the third defendants' General Hospital in Kuala Lumpur), based his claim of negligent treatment by the second defendants.

It is without doubt that from the initial X-ray taken of the plaintiff when he was in the second defendant's hospital, the doctors there were of the opinion that a rupture of the plaintiff's urethra was suspected. According to almost all the doctors who testified, the correct approach to treat such injuries would either be the conservative or the aggressive method. The aggressive method is to proceed immediately to operate on the patient to carry out repair works on the urethra. As for the conservative approach, it is by inserting a catheter into the urethra and leaving it for 2-3 weeks, allowing it to heal on its own. In any event, whichever approach is adopted, it is also a general practice to carry out tests to ascertain whether the patient's urethra is actually ruptured. The test can either be in the form of a urethrogram or a cystoscopy. A urethrogram requires the aid of a qualified radiologist while a cystoscopy can be performed by a surgeon. A cystoscopy is a visual examination with the aid of a small scope inserted into the urethra.

It was rather unfortunate that though DW1 inserted a catheter in the plaintiff's urethra when the plaintiff was admitted to his hospital, it was removed 4 days later, rather than being left there for 2 to 3 weeks. DW1 has given his reasons for doing so but, what was most regrettable was that after 13 December 1988, more than 5 catheters were inserted. With a suspected ruptured urethra, according to both PW5 and DW3 was certainly dangerous, for a partial rupture may turn into a complete rupture. In addition to this, each catheter inserted has a considerable risk of introducing bacteria into the body which will lead to infection.

From these, the obvious question is, why was a test to determine the exact condition of the plaintiff's urethra not carried out in the first place. DW2 explained that though there was a suspicion of urethra injury from the very beginning, but when clear urine was obtained from the plaintiff who even subsequently discharged it without the assistance of a catheter, this suspicion diminished. In any event, a urethrogram was fixed on 28 December 1988, but unfortunately it was cancelled due to the absence of the radiologist. Subsequently, when the plaintiff's condition deteriorated, the more important issue at hand was to save his life rather than determining whether his urethra was ruptured.

The plaintiff's condition began to take a turn for the worse on 13 December 1988. He urinated blood and his temperature rose. He had also difficulty in urinating. When his urine culture was returned on 20 December 1988, pseudomonas was present. Obviously, the plaintiff was having an infection. Though antibiotics were changed and the plaintiff's temperature subsided,

and according to the DW2 clear urine was obtained, the plaintiff was still experiencing difficulty in urination. By this time, his abdomen area has swollen and in order to urinate, he has to depress it.

For the swelling of the plaintiff's abdomen, DW2 diagnosed it as "bladder diverticular". This was explained as "out pouching of the bladder which may be due to inborn." To this Court's opinion, though this may be a possibility but, certainly remote when all signs pointed towards urethra and bladder injuries. In fact, DW2 has admitted in evidence that during this period he has also suspected urethra and bladder injuries causing urine to seep out into the plaintiff's abdomen cavity. But despite this suspicion, this Court fails to understand why the urethrogram test cannot be brought forward as this would be a case of emergency. If this was not possible, DW2 could have carried out a cystoscopy himself. If he felt not competent enough to carry out such task, or the 2nd defendants hospital not having the necessary facilities, a referral could have been made to the General Hospital in Kuala Lumpur, where a full urological unit exists.

Further, when supra pubic mess appeared and the various catheters inserted were not draining the plaintiff's urine appropriately, DW2 should have performed a supra pubic cystoscomy. This is an accepted medical practice where a tube is inserted into the patient's supra pubic area to extract any liquid therefrom. Such a procedure would have prevented septicaemia. Instead, the plaintiff was catheterised many more times, each causing further and greater injuries and more vulnerability to bacterial infection introduced by these foreign objects.

DW2 was well aware of the consequences of a ruptured urethra. According to him:

> if rupture of the urethra is not treated, the urine will seep out to the surrounding areas. The patient will be unable to pass urine. The seepage will cause a roaring infection. There will be narrowing (srticture) of the urethra. If again not treated for a roaring infection, the patient will go into septicaemia. The patient may die.

The plaintiff's symptoms from 13 December 1988 to 6 January 1989 seem to fit exactly what DW2 has prescribed. The catheters inserted were not draining the plaintiff's urine properly, instead they were seeping out by the sides; the appearance of the supra pubic mess when punctured by DW1 with a needle drew out urine; the plaintiff was in a comatose condition; all these seems to point towards only one very probable cause - the urethra injury. Despite this being suspected from the very beginning up to the day of the plaintiff's discharge from the second defendants' hospital, a more conclusive probe into this direction was never carried out. Though it was unfortunate that the urethrogram appointment was cancelled on 28 November 1988 but, a cystoscopy which was contemplated on various occasions from the time of the plaintiff's admission, was directed by DW2 as, "not necessary".

After 28 November 1988, all treatments were concentrated in the saving of the plaintiff's life. This was by balancing his electrolytes. But why was there no concern about what caused his electrolytes to be imbalanced? DW2 agreed that septicaemia may affect the patient's well-being and cause nauseating feeling, yet no steps were taken to determine where it originated, from particularly when there existed a strong suspicion of a probable cause - urethra injury.

All the above inactions were neglect and coupled with the incorrect diagnosis and treatments, in the opinion of this Court, caused and attributed substantially to the plaintiff's present condition. They were also failures of the second defendants doctors in exercising a fair and reasonable standard of care and skill as expected of an ordinary professional possessing such skill and art when treating the plaintiff. (See the case of *Bolam v. Friern Hospital Committee* [1957] 2 All ER 118 and accepted by us through *Chin Keow v. Government of*

Malaysia [1967] 2 MLJ 45 and *Ow Nam Seng v. Nagamah* [1982] 1 MLJ 128). For these reasons, this Court therefore finds the second and third defendants also liable to the plaintiff for damages suffered by him.

This Court shall now proceed with the assessment of damages.

For special damages a sum of RM100,178 was agreed upon except for cost of nursing care. This agreed amount includes pre trial and post trial loss of earnings.

Plaintiff's Counsel is of the view that for cost of nursing care, it should be a sum of RM1,860 per month. This is based on the view of Dr. Arumugasamy when he stated that the plaintiff requires full time supervision. At the present moment, the plaintiff's mother is looking after him. Most of the time he is confined to a wheel chair. PW1 informed the Court that he did enquire into the services of a maid which cost about RM500 per month. Counsel for the second and third defendants argued that a sum of RM350 per month should be sufficient. After considering the condition of the plaintiff, this Court finds that a sum of RM500 per month as nursing care should be reasonable.

As for the multiplier to be used, the plaintiff's Counsel was of the view that it should be 25 while the second and third defendants' Counsel felt that it should be based on 20 using the annuity table. As for the first defendant's Counsel, his view was 19 years (after having deducted 6 years for pre trial cost of nursing care), using the annuity table for post trial nursing care cost.

This Court finds that it should be;

(a) for pre trial cost of nursing care at RM500 per month for 70 months = RM35,000;

(b) for post trial cost of nursing care at RM500 per month for 20 years based on annuity table = RM74,773.

For pain, sufferings and loss of amenities, it can be broken down and awarded as follows;

(1) *Fracture of femur*
This Court awards a sum of RM12,000

(2) *Fracture of tibia and fibula*
This Court awards a sum of RM12,000

(3) *Fracture of Pelvis*
This Court awards a sum of RM16,000

(4) *Abrasions and lacerations*
This Court awards a sum of RM4,000

(5) *Brain injury and partial quadraplegia*
This Court agrees with the submission of the first defendant's Counsel that there is an overlapping of these two injuries.

Under these two head of injuries, this Court awards a sum of RM200,000.

Therefore on general damages for pain, suffering and loss of amenities the total sum awarded is RM243,000.

As for interest, the following shall be awarded:

(1) there shall be 8% per annum on the award of RM243,000 for general damages from date of service of writ to date of judgment;

(2) there shall be an interest of 4% per annum on RM79,978 from date of accident to date of judgment; this RM79,978 is made up of as follows;

(a) agreed special damages other than loss of past earnings, cost of past nursing care, cost of special food in the future and wheel chair = RM 8,330

(b) loss of past earnings (as agreed) = RM36,648

(c) cost of pre trial nursing care = RM35,000

RM79,978

========

(3) there shall be interest of 8% per annum on the total judgment sum from date of judgment to date of realisation.

The next issue is the apportionment of damages. At an earlier stage of this case, Justice Dato' Mohtar Abdullah (as he then was) had ruled 100% liability against the first defendant for causing the motor accident from which the plaintiff was injured. As the result of this ruling, the first defendant has paid to the plaintiff an interim sum of RM50,000 by way of a Court order. The first defendant is of the opinion that this should be sufficient to pay for their portion of the liability since there is no evidence of any disabilities to the plaintiff's limbs; the sum of RM50,000 should be sufficient to cover the orthopaedic injuries suffered by the plaintiff.

This Court cannot accept this contention of the first defendant as, there is no evidence to detect precisely the present condition of the plaintiff especially his limbs and immobility are not due to his initial injuries.

On this issue, this Court shall apportion the damages awarded according to the degree of liability of the defendants. This method is adopted in the case of *Kathararayan v. Ng Sup Moi* [1987] CLJ 246 and also followed in *Kow Nan Seng v. Negamah & Ors.* [1982] CLJ 128. For the degree of liability, this Court finds the 1st defendant 20% responsible and the second and third defendants 80% responsible. The quantum of damages shall therefore be apportioned according to the percentage of liability of each of the defendant.

This Court also awards cost to the plaintiff for this action.